

# Notice of Allowability

Application No.

10/031,757

Applicant(s)

STRANDBERG, HANS

Examiner

Carl H. Layno 10/19/04

Art Unit

3762

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Paper No. 09102004.
2. ☒ The allowed claim(s) is/are 12-24.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☒ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☒ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☒ to Paper No./Mail Date 2/11/04.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

- |   |   |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)           |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                   |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance  |
|   | 9. <input type="checkbox"/> Other _____   |

### **DETAILED ACTION**

1. Acknowledgment is made of applicant's amendment which was received by the Office on September 10, 2004.

2. Claims 1-11 are canceled. Claims 12-24 are active.

#### ***Claim Rejections - 35 USC § 102***

3. Upon further reconsideration of applicant's arguments regarding the Peterson et al '882 patent, the Examiner is withdrawing the 35 U.S.C 102(b) rejection of Peterson et al '882, which was made against claims 12, 15, and 20 in the last Office action.

#### ***Examiner's Amendment***

4. The application has been amended as follows:

-Change the title to: "Pacemaker Using Measured Intervals for Mode Switching".

#### ***Allowable Subject Matter***

5. Claims 12-24 are allowed.

6. The following is an examiner's statement of reasons for allowance:

The Peterson et al '883 patent, cited by the Examiner in the last Office action, includes a plurality of counters used in the determination of cardiac arrhythmias (AF, AT, VF, VT). As

Art Unit: 3762

mentioned by the applicant, these counters are either incremented or decremented based upon detected and calculated events. In no case is a counter simply incremented or decremented based upon the size of a measured interval compared to a "tachycardia limit value", in the manner claimed by the applicant (claim 12). In addition to the AF/AT Evidence Counter, cited by the Examiner in the last action and the applicant in the amendment of 9/10/04, Peterson et al '883 includes the use of a "Cycle Length Regularity Counter" (col.23, line 57) which is incremented or decremented based upon a comparison between a difference in measured lengths from among 12 recorded atrial intervals and a median PP value divided by 4. Although the patent also refers to the measurement of pacing intervals in the Abstract (lines 14-20) and their adjustment by incrementing or decrementing, this does not refer to the use of counters. Unable to meet applicant's claimed interval comparisons, the Examiner deems independent claim 12 and its depending claims to be allowable over the prior art.

All remaining claims having been allowed, **formal drawings are now required.**

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."



CARL LAYNO  
PRIMARY EXAMINER

CHL  
10/19/2004